STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEAMSTERS LOCAL 150, Charging Party, v. COUNTY OF SACRAMENTO, Respondent.	Case No. SA-CE-717-M PERB Decision No. 2315-M April 15, 2013

Appearances: Beeson, Tayer & Bodine by John Provost, Attorney, for Teamsters Local 150; Timothy D. Weinland, Deputy County Counsel, for County of Sacramento.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Teamsters Local 150 (Teamsters) from a dismissal (attached) of its unfair practice charge alleging that the County of Sacramento (County) refused to bargain the effects of its decision to terminate a home vehicle retention assignment.

The amended charge alleged that the County violated the Meyers-Milias-Brown Act (MMBA)[1] when it removed from approximately 20 bargaining unit employees, the right to take their County-issued vehicles home at the end of their work day. The Office of the General Counsel dismissed the charge for failure to state a prima facie case.

We have reviewed the record and the dismissal in light of the Teamsters' appeal, the County's response thereto and relevant law. Based on the review, we affirm the dismissal in accordance with the following discussion.

[1] MMBA is codified at Government Code section 3500 et seq.

SUMMARY OF ALLEGATIONS[2]

Since 1995, sewer district supervisors, the employees represented by the Teamsters, were permitted to take their County-issued vehicles home to facilitate the supervisors' response to emergencies at night and on weekends. By letter dated October 5, 2010, the County notified Ken Akins (Akins), the Teamsters representative, that it intended to discontinue this benefit for about 20 of the supervisors who had not been called on to respond to emergencies very frequently in the past year.

The Home Vehicle Retention Policy provides, in pertinent part:

> Existing assignments no longer justified shall be dealt with in one of the following ways. The department head shall:
>
> Terminate the assignment within 30 days and notify the Fleet Services Automotive Services Manager that the vehicle . . . has been converted to departmental pool utilization or will be returned to the interdepartmental pool or
>
> Obtain approval of . . . Director of General Services . . . for transitional continuance of the assignment beyond 30 days.

The October 5, 2010 letter informed the Teamsters that the County intended to give the affected employees the 30 days' notice as required by the policy. The letter asked that Akins contact the County by October 13, 2010, if he wanted to discuss the issue. The Teamsters did not respond by October 13, 2010, and on October 21, 2010, the County notified the Teamsters that it was going to give the employees their 30-day notice before rescinding the home vehicle retention assignment.

By early November 2010, Akins spoke to Pat Oehler (Oehler), the County representative, about this issue and a meeting was scheduled for November 16, 2010. At this

[2] At this stage of the proceedings, we assume that the essential facts alleged in the amended charge are true. (*San Juan Unified School District* (1977) EERB Decision No. 12 [Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB]; *Trustees of the California State University (Sonoma)* (2005) PERB Decision No. 1755.)

meeting, the County "went over the data that supported terminating" the home retention vehicle assignments, according to the amended charge. Akins told the County that he would confer with his members and "get back" to the County. The allegations do not indicate that proposals were presented by either party at this meeting, and there is no allegation that the Teamsters demanded to bargain either before or after this meeting.

A week later Akins met with his members and learned that they strongly objected to having the home retention vehicle assignment rescinded. On November 30, 2010, Akins wrote Oehler informing her of the employees' objections, and said, "Nevertheless, we believe that there are various issues which deserve discussion relative to this issue." This letter concluded with a request for possible meeting times and offered to "provide you with some ideas ahead of such meeting." The amended charge does not describe what, if any, ideas were provided by the Teamsters, either before any meeting or at any other times.

The County did not respond to the Teamsters' November 30, 2010 letter until December 17, 2010, due to an Oehler family emergency. In a December 17, 2010 email, Oehler asked Akins for possible meeting dates and informed him that the County "will be moving forward with the termination of the affected employee's [sic] home retention vehicle assignment as previously indicated."

Akins responded to this email on December 31, 2010, offering to meet on three dates in mid-January, 2011, and asked the County to refrain from terminating the home retention of vehicles, as that "would put the County in an unfair advantage with respect to these negotiations." Oehler denied receiving this email, but responded by email to Akins on January 7, 2011, informing him that the policy had already been implemented and would not be rescinded. The County was nevertheless willing to meet "to answer any questions you might still have."

This unfair practice charge was filed on March 8, 2011.

THE DISMISSAL

The Office of the General Counsel dismissed the charge, finding that the Teamsters had failed to make an effective demand to negotiate over the effects of the County's decision to end the vehicle home retention assignment.[3] Relying on *State of California (Department of Veterans Affairs)* (2010) PERB Decision No. 2110-S (*Veterans Affairs*), among other cases, the Office of the General Counsel stated that the Teamsters' request to negotiate over the effects of a non-negotiable management decision must contain three components: a statement that clearly indicates it is effects that the Teamsters seeks to negotiate; identification of subjects within the scope of representation impacted by the decision; and identification of the specific effects over which the union wishes to bargain. (Dismissal letter, at p. 3.)

The Office of the General Counsel concluded that the Teamsters' letter of November 30, 2010, describing the members as "resistive" to the proposed changes and noting that there were "various issues which deserve discussion," did not trigger the employer's duty to negotiate effects of its decision because it did not explicitly request to negotiate effects and did not identify any specific effects of the decision that would be negotiable.

POSITIONS OF THE PARTIES

The Teamsters appealed the dismissal, arguing that its request to discuss the change in policy was sufficient to trigger the County's duty to bargain over the effects of the change, and even if it were not sufficient, the fact that the County agreed to negotiate over the effects precluded it from implementing the change until negotiations were concluded.

The County disputes that it ever agreed to negotiate over effects, relying on Oehler's December 17, 2010, communication which stated the change would occur on January 1, 2010.

[3] The Teamsters does not allege that the employer had a duty to negotiate over the decision to rescind the vehicle home retention assignment for the affected employees.

The fact that she was willing to "discuss" the matter was merely following up on her earlier offer to do so. "Discussing" is not tantamount to negotiating, according to the County.

Moreover, there is no duty to negotiate over the decision or the effects, according to the County, because the Home Vehicle Retention Policy permits rescission of the benefit on 30 days' notice.

DISCUSSION

It is well-settled that once an employer makes a firm decision to change negotiable terms and conditions of employment, it must provide the exclusive representative with notice and a reasonable opportunity to negotiate prior to taking action that affects matters within the scope of representation. (*Trustees of the California State University* (2012) PERB Decision No. 2287-H (*CSU*).) Having received notice of the proposed change, the exclusive representative must then make a valid request to bargain.

In order to perfect a valid demand to bargain, the exclusive representative is not required to recite a formulaic phrase, but may express its request in any form that conveys its desire to meet and confer or negotiate about a matter within the scope of representation. A request to "discuss [the] matter," as opposed to "negotiate" or "meet and confer" has been held to put the employer on notice of the union's desire to bargain. (*County of Riverside* (2010) PERB Decision No. 2097 (*Riverside*).) Mere protests or expressions of concern or disagreement with the decision will not suffice. (*Sylvan Union Elementary School District* (1992) PERB Decision No. 919 (*Sylvan*); *Delano Joint Union High School District* (1983) PERB Decision No. 307.) But if a simple request to discuss the matter were all it took to invoke the employer's duty to bargain over the effects of an otherwise non-negotiable decision, a complaint against the County would have issued, as the Teamsters letter of November 30, 2010, asking for a discussion of "various issues" would have sufficed. However, that is not all

that is required to trigger the employer's duty to negotiate over the effects of a non-negotiable decision.

When a proposed change is negotiable only as to its effects on terms and conditions within the scope of representation, it is incumbent upon the exclusive representative to indicate in its demand that it seeks to negotiate over effects (which includes implementation), rather than the decision itself. "[A] valid request will be found, regardless of its form or the words used, if it adequately signifies a desire to negotiate on a subject within the scope of bargaining." (*Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223 (*Newman-Crows Landing*).) Thus, for example, in *Mt. Diablo Unified School District* (1983) PERB Decision No. 373 (*Mt. Diablo*), when notified of impending layoffs, the union demanded to negotiate "any and all impacts upon members of our bargaining unit in any and all mandatory subjects for negotiation resulting from your decisions of recent weeks." This was deemed by PERB as sufficient to put the employer on notice that the union wished to negotiate effects and any negotiable items related to the implementation of the layoff. (*Mt. Diablo*, at pp. 21-22.)

In *The Regents of the University of California (Lawrence Livermore National Laboratory)* (1997) PERB Decision No. 1221-H (*Lawrence Livermore*), at p. 7, the Board reiterated that a demand to bargain effects need not take a particular form, but must put the employer on notice that the union desired to negotiate effects, rather than the decision itself.

> The Board does not require that a request to bargain over the effects of a change include a laundry list of all possible effects implicated by the change. (See Newman-Crows Landing Unified School District (1982) PERB Decision No. 223 at p. 9 (noting that request to bargain need not be made in any particular form).) Once the Association requested bargaining over the effects of the reduction in staff, the University was obligated to negotiate over all of the reasonably foreseeable effects of that change, including those effects not specifically mentioned in the request.

In the decade following *Lawrence Livermore*, PERB issued several decisions which in dicta added to the requirements necessary to perfect a valid demand to bargain over effects of decisions within the managerial prerogative. *Veterans Affairs,* relied on by the Office of the General Counsel in this dismissal, is one such case. There, the State determined to close the acute care unit at the Yountville Veterans Home, a decision that was not negotiable. However, the effects of the closure potentially were within the scope of bargaining, and the employer would have been obligated to negotiate had the exclusive representative made a valid demand. Instead, the union initially informed the employer that it wanted to negotiate over the decision to close the unit which was followed by a letter asserting that the closure was "illegal." It never demanded to bargain over the effects of the closure.

In reaching the conclusion that these demands were invalid, PERB relied on *Sylvan* and *Newman-Crows Landing* for the proposition: "the demand...must sufficiently signify the exclusive representative's desire to bargain over a subject within the scope of representation." (*Veterans Affairs,* at p. 8.) The Board continued: "When an exclusive representative demands to bargain over the effects of a non-negotiable decision, the demand must clearly identify the negotiable effects," citing *Newman-Crows Landing* again and *State of California (Department of Corrections)* (2006) PERB Decision No. 1848-S (*Corrections*). (*Veterans Affairs; id.*) [4]

[4] However, *Newman-Crows Landing* says nothing about "clearly identifying the negotiable effects" as a required element in a demand to bargain. Nor does *Corrections,* which involved a reduction of staffing levels at a state prison, a decision within management's prerogative. The Office of the General Counsel dismissed the charge in *Corrections* because the union had failed to demand to bargain over the effects of the staffing level changes or to submit proposals addressing concerns the union had regarding safety. Instead, the union simply opposed the decision, and the allegations did not establish that it ever demanded to bargain effects, a requirement that has been clear since the days of *Newman-Crows Landing. Corrections* did not base the dismissal of the charge on any failure of the union to identify negotiable effects in its demand. The union simply failed to signify that it wished to bargain over effects rather than the decision.

Several other cases decided prior to *Veterans Affairs* had added via dicta the requirement that the exclusive representative must "clearly identify the negotiable areas of impact" when making a demand to bargain the effects of a non-negotiable decision. (*City of Richmond* (2004) PERB Decision No. 1720; *Riverside*; *Fresno County Superior Court* (2008) PERB Decision No. 1942-C [requiring the union to "clearly identify the negotiable areas of impact"].)

Through the years, dicta have emerged in a way that has strayed from the original requirements of *Newman-Crows Landing* and *Mt. Diablo* in such a manner as to place an undue burden on the party seeking to invoke the collective bargaining process in appropriate situations.

This evolving dicta culminated in *Beverly Hills Unified School District* (2008) PERB Decision No. 1969 (*Beverly Hills*). There the Board dismissed an unfair practice charge alleging a refusal to bargain the effects of the employer's decision to release copies of student exams because the union failed to identify in its demand "which negotiable subjects [the union] believed were impacted by the test release policy nor did it identify any specific effects on those subjects." (*Beverly Hills*, at p. 13.) By this language, the Board added a third element to the standard for demonstrating a valid demand to bargain over effects. In addition to demonstrating that the demand seeks to bargain effects rather than the decision and that the subjects impacted by the decision are within the scope of bargaining, *Beverly Hills* required the exclusive representative to also identify specific effects the employer's decision would have on those subjects.

We hold that requiring an exclusive representative to identify specific effects in its demand to bargain the effects of a non-negotiable decision goes beyond the original spirit of *Newman-Crows Landing*, *Mt. Diablo,* and *Lawrence Livermore*, all of which stressed that the

demand to bargain effects need not be formalistic or burdensome, nor anticipate every imaginable effect a proposed change may have. Instead, an effects bargaining demand must place the employer on notice that the exclusive representative seeks to negotiate over effects and that it believes the proposed change affects one or more subjects within the scope of representation, such as wages, hours, or other terms and conditions of employment.

The better view, of which the Office of the General Counsel did not have benefit, has been set forth in *CSU*, at p. 11, where the Board stated that a valid demand to bargain over the effects must "clearly identify negotiable areas of impact, and clearly indicate the employee organization's desire to bargain over the effects...as opposed to the decision itself. [Citations omitted.]" Even more recently we held in *Rio Hondo Unified School District* (2013) PERB Decision No. 2313 (*Rio Hondo*), at p. 5: "the demand must identify clearly the areas of impact, viz. matters within the scope of representation, on which [the exclusive representative] proposes to bargain."

These more recent cases effectuate the purpose of the collective bargaining statutes by requiring the exclusive representative to put the employer on notice that it seeks to bargain at least over effects and identify the matters within scope foreseeably affected by the change, while not thwarting negotiations by requiring overly formalistic requests to bargain. To the extent that *Beverly Hills* or any other case requires more than these two elements, we expressly disavow those decisions.

In this case, as the Office of the General Counsel correctly found, the Teamsters' request to bargain failed even under our more recent holdings. It failed to demand negotiation over effects of the decision, as opposed to the decision itself, and it failed to indicate any matter within the scope of representation that was foreseeably affected by the County's non-negotiable decision to terminate the home vehicle retention assignment for the employees.

The Teamsters asserts that regardless of the sufficiency of its bargaining demand, the County was obligated to refrain from implementing a change in the policy until negotiations were completed because the County had agreed to negotiate. Had negotiations actually commenced, this argument would have some weight. (See *Compton Community College District* (1989) PERB Decision No. 720 (*Compton*), at pp. 14-15.[5])

The facts alleged do not demonstrate that the County ever agreed to negotiate in response to the Teamsters' communications. The Teamsters was informed as early as October 5, 2010, that the County intended to terminate the "home retention assignment" as soon as administratively possible. This letter invited the Teamsters to discuss this issue by contacting Oehler by October 13, 2010. The Teamsters did not respond by October 13, 2010, but arranged for a meeting with Oehler on November 16, 2010, at which time Oehler explained why the County wanted to stop allowing home vehicle retention. According to the amended charge, Akins "said he would speak to his members and get back to Mr. [sic] Oehler." The Teamsters did not demand to bargain anything at this meeting and did not submit proposals. The Teamsters did ask to "discuss" the matter in its November 30, 2010 letter, but for reasons discussed above, this was not a sufficient demand to bargain the effects of the County's decision.[6]

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[5] In *Compton*, the Board held that an employer may implement a non-negotiable decision after providing notice and an opportunity to negotiate when it can be shown that the implementation date was not an arbitrary one, but is based either on an immutable deadline or that delay in implementation would "effectively undermine the employer's right to make the nonnegotiable decision; . . . [that] notice of the decision and implementation date [was] given sufficiently in advance [as to allow] for meaningful negotiations prior to implementation; and . . . [that] the employer negotiate[d] in good faith prior to implementation and continues to . . . [do so] after implementation . . . ."

[6] The situation presented by these facts differs from one in which an exclusive representative makes an arguably late demand to bargain. Here the Teamsters failed to even make its intentions clear. By failing to demand bargaining over effects and by not indicating matters within the scope of representation the change could foreseeably impact, the Teamsters

The Teamsters cites the December 17, 2010, email from Oehler to Akins as proof of the County's agreement to negotiate, but that communication merely asks for dates on which the Teamsters were available to meet. It demonstrates nothing about the subject matter of these future meetings. The December 17, 2010, message continues by clearly informing the Teamsters that the County will be "moving forward with the termination of the affected employee's [sic] home retention vehicle assignment as previously indicated." In the absence of a valid demand to negotiate over the effects of the decision and in the absence of evidence that negotiations (as opposed to an informational meeting) occurred in the November 16, 2010 meeting, we will not presume that the County's willingness to answer further questions in December evidenced an agreement to negotiate. To hold otherwise would penalize the employer for doing what the purpose of the MMBA envisions—promoting full communication between public employers and their employees. Simply agreeing to provide information or answer questions does not trigger an obligation to negotiate in the absence of a valid demand by the exclusive representative to bargain.

The County gave the Teamsters reasonable notice of its decision to terminate the home vehicle retention assignment for certain unit members. (*Mt. Diablo; CSU.*) Having done so, it was up to the Teamsters to make a valid demand to bargain over effects.[7] As explained above, the Teamsters failed to make such a demand or submit proposals, even though it had ample opportunity to do so at the November 16, 2010 meeting with Oehler or at any time after receiving the October 5, 2010 notice of the proposed change.

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did not trigger the employer's duty to seek clarification, as we recently discussed in *Rio Hondo*.

[7] There is no dispute that the decision to discontinue the home vehicle retention assignment was not negotiable. The County asserts that the change was not negotiable even as to effects. We need not address that claim, as we uphold the Office of the General Counsel's dismissal of the charge.

ORDER

The unfair practice charge as amended in Case No. SA-CE-717-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8383
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August 19, 2011

John Provost, Attorney
Beeson, Tayer & Bodine
520 Capitol Mall, Suite 300
Sacramento, CA 95814-4714

Re: *Teamsters Local 150 v. County of Sacramento*
Unfair Practice Charge No. SA-CE-717-M
DISMISSAL LETTER

Dear Mr. Provost:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 8, 2011. Teamsters Local 150 (Teamsters or Union or Charging Party) alleges that the County of Sacramento (County or Respondent) violated sections 3503, 3504.5, and 3505 of the Meyers-Milias-Brown Act (MMBA or Act)[1] by unilaterally implementing a significant change to the terms and conditions of employment for employees represented by the Union[2] and by unilaterally implementing a new policy dealing with standby assignments, without giving the Union an opportunity to bargain over either.

Charging Party was informed in the attached Warning Letter dated May 16, 2011, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge. On June 3, 2011, the Union filed a First Amended Charge. In its First Amended Charge, the Union clarifies that its allegations with respect to the Home Vehicle Retention Policy concern the County's failure and/or refusal to bargain over the effects of the decision rather than the decision itself.

Factual Background

The Union is the exclusive representative of supervisory employees of the County in several departments. One such department is the Sacramento Area Sewer District (Sewer District). The Sewer District provides vehicles to all of its supervisory employees. The supervisors are required to be on call or on standby for emergency situations at night and on weekends. The

[1] The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

[2] As discussed further below, this allegation concerns the County's application of a Home Vehicle Retention Policy.

established past practice has been to allow the Sewer District supervisors to take their County vehicles home to facilitate the employees' availability for emergency calls.

On October 5, 2010, County representative Pat Oehler contacted Ken Akins, a Union representative, by letter. Oehler's letter informed Akins that the Sewer District would be "terminating the home retention assignment of several supervisors who are represented by the Teamsters." The letter referenced and attached the County's "Home Retention Vehicle Policy," dated July 1, 2007. The letter discussed the reasons for terminating the home retention assignment of employees identified in an attachment to the letter. Oehler's letter further stated that it was the Sewer District's "intent to provide the employees cited in the attached list with a 30-day notice that their home retention vehicle assignment will be terminated." Oehler's letter also referenced and attached a copy of newly developed "Standby Guidelines for its employees," that would be applicable to supervisory employees. Oehler invited Akins to contact him by October 13, 2010, if the Union wished to discuss either issue.

Akins and Oehler met in early November 2010. Oehler explained the basis for the County's decision regarding vehicle home retention, and Akins stated that he would contact the affected members and get back to Oehler. When Akins met with the affected supervisors, they "were adamantly opposed to ending home vehicle retention." According to the charge, the supervisors believed home retention was "a term of their employment" and they believed it was necessary vis-à-vis responding to emergency calls.

Akins wrote to Oehler on November 30, 2010, stating that the supervisors and the Union were "resistive to the proposal" regarding changes to home vehicle retention, and that "resistive" was an "understatement." Akins also stated, however, that the Union believed there were "various issues which deserve discussion relative to the issue." Akins requested that Oehler provide available dates for a meeting, and stated that the Union would provide "some ideas ahead of such meeting."

Oehler responded via e-mail on December 17, 2010, asking for suggested meeting dates but also stating that, while prepared to meet, the termination of home vehicle retention rights would proceed. Akins replied on December 31, 2010, suggesting meeting dates in January 2011, and urging the County to "step back" and not proceed with the home vehicle retention changes prior to any negotiations. Oehler later reiterated, in a January 7, 2011, e-mail message to Akins, that the home vehicle retention rights of the affected supervisors had already been terminated, but Oehler again offered to meet on the issue.

Discussion

1. Home Vehicle Retention Policy

The Warning Letter concluded that the charge in this matter did not present facts demonstrating that any change in policy had been implemented with respect to the Home Vehicle Retention Policy. In the First Amended Charge, and a letter submitted with it, the Union acknowledges that the policy was not changed. The Union, however, argues that the

County unlawfully "refused to bargain over the effects of its decision to rescind home retention rights for many employees." Citing *County of Riverside* (2010) PERB Decision No. 2097-M, the Union contends that an employer is obligated to provide notice and an opportunity to bargain over the negotiable effects of a decision, even where the decision itself is not negotiable. The Union further argues that, based on Akins' November 30, 2010 letter to Oehler, the Union was "clearly requesting effects bargaining over the County's decision."

While the Union correctly asserts that a non-negotiable decision by an employer may still be subject to negotiations with respect to negotiable effects of that decision, the charge in this matter does not contain sufficient facts to demonstrate that the County failed to fulfill its duty to bargain over any negotiable effects of the changes in its application of the Home Retention Vehicle Policy.

While a union is not obligated to present a "laundry list" of negotiable effects (*The Regents of the University of California (Lawrence Livermore National Laboratory)* (1997) PERB Decision No. 1221-H), any demand to negotiate over negotiable effects of a non-negotiable decision must identify those subjects within the scope of representation impacted by the decision as well as the specific effects over which the union wishes to bargain. (*State of California (Department of Veterans Affairs)* (2010) PERB Decision No. 2110-S [letter stating union's displeasure that it was not afforded an opportunity to show the department why acute care unit closure was not cost-effective did not constitute valid demand to bargain negotiable effects of the closure decision].)

Likewise, where a union objected to the employer's decisions to demolish a security tower and to install surveillance cameras, but did not make a demand to bargain that identified any specific negotiable effects of the decisions, the employer did not violate the Act by refusing to bargain over the effects of its decisions. (*State of California (Department of Developmental Services & Office of Protective Services)* (2009) PERB Decision No. 2062-S.)

Here, in its November 30, 2010 letter, the Union merely stated that its members and the Union were "resistive" to the proposed changes concerning the Home Retention Vehicle Policy, and that there were "various issues which deserve discussion." This communication is not sufficient to establish that the Union clearly demanded to bargain over negotiable effects of a decision, as opposed to the decision itself, or that it identified any specific effects that would be subject to a duty to bargain. (*State of California (Department of Veterans Affairs)*, *supra*, PERB Decision No. 2110-S; *State of California (Department of Developmental Services & Office of Protective Services)*, *supra*, PERB Decision No. 2062-S; *County of Riverside*, *supra*, PERB Decision No. 2097-M; *Beverly Hills Unified School District* (2008) PERB Decision No. 1969; *Fresno County Superior Court* (2008) PERB Decision No. 1942-C; *Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223.)

Thus, under the standards discussed above, this allegation fails to state evidence of a prima facie violation and must be dismissed.

2. Standby Guidelines

In the "Statement of Conduct Constituting Unfair Labor Practice" that is attached to the First Amended Charge, the Union references the fact that Oehler's October 5, 2010 letter to Akins included with it "a copy of proposed new Standby Guidelines for supervisors." A copy of the proposed guidelines is also provided with the charge. In the statement of conduct, the Union alleges that the County "unilaterally implemented a new policy dealing with Supervisor standby assignments without giving the Union an opportunity to bargain."

The elements required to establish prima facie evidence of a unilateral change violation were discussed in the earlier Warning Letter and will not be reiterated here. The Warning Letter also addressed the burden required of a charging party under PERB Regulations and case law. As noted, PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

In this case, there is simply no evidence presented with the charge to demonstrate that the proposed new standby guidelines constituted a change in policy, nor that the Union ever demanded to bargain over the proposal, nor that the County refused a demand to bargain. For these reasons, this allegation must also be dismissed. (*State of California (Department of Veterans Affairs)*, *supra*, PERB Decision No. 2110-S.)

Right to Appeal

Pursuant to PERB Regulations, Charging Party may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs, tit. 8, § 32635, subd. (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs, tit. 8, § 32635, subd. (b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs, tit. 8, § 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

M. SUZANNE MURPHY
General Counsel

By _____
Les Chisholm
Division Chief

Attachment

cc: Timothy D. Weinland

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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May 16, 2011

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Re: *Teamsters Local 150 v. County of Sacramento*
Unfair Practice Charge No. SA-CE-717-M
WARNING LETTER

Dear Mr. Provost:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 8, 2011. Teamsters Local 150 (Teamsters or Union or Charging Party) alleges that the County of Sacramento (County or Respondent) violated sections 3503, 3504.5, and 3505 of the Meyers-Milias-Brown Act (MMBA or Act)[1] by unilaterally terminating vehicle home retention rights for certain employees.

The Union is the exclusive representative of supervisory employees of the County in several departments.[2] One such department is the Sacramento Area Sewer District (Sewer District). The Sewer District provides vehicles to all of its supervisory employees. The supervisors are required to be on call or on standby for emergency situations at night and on weekends. The established past practice has been to allow the Sewer District supervisors to take their County vehicles home to facilitate the employees' availability for emergency calls.

On October 5, 2010, County representative Pat Oehler contacted Ken Akins, a Union representative, by letter. Oehler's letter informed Akins that the Sewer District would be "terminating the home retention assignment of several supervisors who are represented by the Teamsters." The letter referenced and attached a County "Home Retention Vehicle Policy," dated July 1, 2007. The letter discussed the reasons for terminating the home retention assignment of employees identified in an attachment to the letter. Oehler's letter further stated that it was the Sewer District's "intent to provide the employees cited in the attached list with a

[1] The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

[2] The Union and the County are parties to a memorandum of understanding (MOU) that was in effect at all times relevant to this matter. However, neither party references any provision of the MOU in support of its position in this matter.

30-day notice that their home retention vehicle assignment will be terminated." Oehler invited Akins to contact him by October 13, 2010, if the Union wished to discuss the issue.[3]

Akins and Oehler met in early November 2010. Oehler explained the basis for the County's decision regarding vehicle home retention, and Akins stated that he would contact the affected members and get back to Oehler. When Akins met with the affected supervisors, they opposed ending the vehicle home retention. Akins wrote to Oehler on November 30, 2010, stating that the Union opposed the change and requesting a follow-up meeting. Oehler responded via e-mail on December 16, 2010, asking for suggested meeting dates but also stating that, while prepared to meet, the termination of home vehicle retention rights would proceed. Oehler later reiterated, in a January 7, 2011, e-mail message to Akins, that the home vehicle retention rights of the affected supervisors had already been terminated.

Home Retention Vehicle Policy

As noted, a document titled Home Retention Vehicle Policy (Policy) was attached to Oehler's October 5, 2010 letter, and is included among the attachments to the charge. The Policy shows an effective date of July 1, 2007. In its position statement, the County asserts that the Policy was adopted following a meet and confer process involving the Teamsters and other affected employee organizations.[4]

Relevant excerpts from the Policy read as follows:

> All individual vehicle/equipment assignments must be justified in writing to the County Executive through the Director of General Services and Chief of Fleet Services (or the Director of Airports, if the vehicle is assigned to Airport staff) prior to the assignment and are subject to periodic review. County vehicles/equipment may be assigned to individuals when essential to the County for safety, cost or operational effectiveness reasons.
>
> The department head may authorize an assignee with permanent duty hour retention to retain the vehicle/equipment overnight

[3] Oehler's letter also referenced and attached a copy of newly developed "Standby Guidelines for its employees," that would be applicable to supervisory employees. Akins was also invited to respond if the Union wished to discuss the guidelines. However, the charge does not include any further reference to the Standby Guidelines and this letter likewise will not further address them.

[4] In determining whether a prima facie case is established, a Board agent may consider information obtained from a respondent, unless that information is disputed or rebutted by the charging party. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

and/or weekends under certain conditions. Except in an emergency, this approval must be obtained in advance.

A department head may request an individual be assigned home retention privileges if the department head deems home retention is in the public interest and/or the task(s) to be performed when called during off-duty hours is beneficial to the County. Home retention privileges should be reserved for one of the following circumstances:

- Emergencies or After Hours Response: An employee is required to respond on a regular basis to after hour emergencies or mission-essential callouts within the County. This scenario presumes that the employee is assigned to after hours/on-call status and that the emergency or callout necessitates an immediate response to the job site or emergency location *and* that the vehicle requires some form of special equipment or mission-related supplies as described below in the paragraph titled "*Duty hour retention*".

Home retention requests must be submitted in writing to the department head for approval. The employee to whom the vehicle is to be assigned must acknowledge, in writing, that they understand and agree to adhere to the policies contained herein; the acknowledgement shall be submitted to the department head along with the request.

When the need for after-hours availability is no longer present, as determined by department head, the assignee shall discontinue driving the vehicle/equipment to and from work. He/she shall instead arrange for the vehicle/equipment to be parked at the County work location during off-duty hours, or returned to the County or Airport vehicle/equipment pool, as appropriate. This requirement applies, but is not limited, to the following periods:

- When assignee is on vacation, sick leave or otherwise off duty for more than five work days.

- When required conditions that justified home retention is interrupted for more than five working days.

Departments shall maintain a list of existing assignments including the type of vehicle/equipment, position classification

> and name of the person to whom the vehicle is assigned, and justification for the assignment.
>
> Each year agency administrators and department heads shall review the necessity for each individual vehicle/equipment assignment prior to submitting departmental budget requests to the County Executive.

(Emphasis in original.)

Discussion

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

In determining whether a party has violated MMBA section 3505 and PERB Regulation 32603(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Stockton Unified School District* (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer breached or altered the parties' written agreement or its own established past practice; (2) such action was taken without giving the other party notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach of the contract, but amounts to a change in policy (i.e., it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*San Joaquin County Employees Association v. City of Stockton* (1984) 161 Cal.App.3d 813; *Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802; *Grant Joint Union High School District* (1982) PERB Decision No. 196; *Walnut Valley Unified School District* (1981) PERB Decision No. 160.)

For a past practice to be binding and subject to a unilateral change analysis, it must be unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. (*County of Placer* (2004) PERB Decision No. 1630-M, citing *Hacienda La Puente Unified School District* (1997) PERB Decision No. 1186; see also *Riverside Sheriffs' Association v. County of Riverside* (2003) 106 Cal.App.4th 1285, 1291.) PERB has also described an enforceable past practice as one that is "regular and consistent" or "historic and accepted." (*Hacienda La Puente Unified School District*, *supra*, PERB Decision No. 1186.)

An employee's use of an employer's vehicle for commuting to and from home has been held to constitute a matter within the scope of representation. (*Los Angeles Unified School District* (2002) PERB Decision No. 1501; *West Covina Unified School District* (1993) PERB Decision No. 973.) However, the charge does not establish that the County's action in this case constitutes a change in policy with respect to the established home retention policy.

While it is evident that the County determined to eliminate vehicle home retention for certain employees represented by the Union, who had been approved in the past for such, the charge does not demonstrate that the decision was inconsistent with the established Home Retention Vehicle Policy. Instead, it appears the established policy contemplates that "administrators and department heads shall review the necessity for each individual vehicle/equipment assignment" on an annual basis.

Without specific facts demonstrating that an actual change in policy was implemented, it is not necessary to examine whether the decision was made without bargaining with the Union or whether it had a generalized effect. (*Grant Joint Union High School District*, *supra*, PERB Decision No. 196.)

Conclusion

For these reasons the charge, as presently written, does not state a prima facie case.[5] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the Respondent's representative and the original proof of service must be filed with PERB. If an amended charge or withdrawal is not filed on or before May 27, 2011,[6]

[5] In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

[6] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)

PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Les Chisholm
Division Chief